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DYNAMITE IN BONUS STOCK.

Long ago the Roman poet made the Trojan patriot exclaim:

"Timeo Danaos et dona ferentes,"

and, because his countrymen would not heed, the City of Troy was sacked by its enemies.

The wiles of American Greeks in generous distribution of bonus stock, as complimentary recognition of local influence and reputation, now are frequently reaping judicial penalties from its acceptance. An interesting illustration of the truth of this observation lies in a recent decision by the Supreme Court of Minnesota. Randall Printing Co. et al. v. Sanitas Mineral Water Co. et al., 139 N. W. 606.

In this case the facts show a foreign corporation was formed for the bottling and selling of mineral water from a spring in Southern Minnesota. The plan of the promoters embraced the securing of locally prominent druggists and physicians as directors and stockholders. Two of such became incorporators and directors and were advertised to the world as such on the letter-heads of the company. At an early meeting of the board of directors there was allotted to each, 2,500 shares of the capital stock, the secretary being authorized "to issue scrip" for said amount, "for services as directors in this company." They got the stock and—but this gets ahead of the story.

In the course of operations the corporation accumulated debts and had no property, it not appearing that the spring, which gushed along with its hopes, was its own. The opinion says: "It is conceded that the corporation had no property within this state and is insolvent." The picture, therefore, is that a South Dakota corporation was organized to bottle and sell mineral water from a spring in Minnesota. It needed local indorsement and druggists and physicians supplied this as a return compliment for a gift of stock. The crash came and Minnesota creditors sued the local donees of stock to have their debts paid out of what they should have paid for their stock.

The chief contention was that the action did not lie because the company was a foreign corporation and the law of its home state did not make stockholders liable to the corporation for unpaid stock, and, therefore, there was no trust fund for creditors to pursue.

The court answered, in effect, that that law did prohibit corporations issuing stock except for money, labor done or money or property actually received, and while this statute did not create an implied contract by the holder of stock to pay for it contrary to the actual contract of subscription, yet "subsequent creditors, when they can be said to have trusted the corporation on the faith of such stock, may recover on the ground of fraud." The presumption of compliance with this law was said to create a representation of fact.

Pursuing, then, the inquiry of when the creditors may be deemed "to have trusted the corporation upon the faith of such stock," it was said: "The presumption of reliance is raised when the creditor proves the issuance of the stock and that he subsequently trusted the corporation. It is true that this is not a conclusive presumption; it is one of fact and may be rebutted. The creditor must have relied upon the representation that the stock issued as fully paid was so in fact, or he was not misled or defrauded; but he is aided by the presumption or inference that he did rely upon the representation. * * * It is not necessary for the creditor to plead or prove that he relied upon the representation or the usual elements of fraud. And it is not fatal to his cause that as a matter of fact he had no personal knowledge of the amount of

the professed capital stock, or of the shares held by any particular stockholder or what he paid for them. Within these rules we are of opinion and hold that it was not shown as a fact that plaintiffs did not extend credit to the corporation in reliance upon the representation that the stock was paid."

This case works out a representation in the way of presumption of a corporation's having been legally organized, and to do this it virtually carries over to creditors in a foreign state knowledge of the statute in force at the home of the corporation. This seems right in one way and wrong in another. It is right upon general knowledge that no one can participate in capital stock of a corporation except he acquire it for a consideration, as capital cannot be created by mere declaration that it exists. It is wrong in basing a representation upon presumption of knowledge of a foreign law.

But, if the representation may be deemed from any standpoint a representation of fact, it is very salutary indeed to say so. If it should lack in force because of what we have suggested, this should be aided by states requiring that the law about acquiring stock in a foreign corporation, should be as strict, at least, as is the law for acquiring stock in a domestic corporation and stockholders, and especially directors, should be deemed as so admitting as to every contract in another state.

But the example we have tried to tell about in this case is filled with food for reflection, and solvent people solicited by eloquent promoters to accept free stock, should remember what was in the frame of the Trojan horse when it was rolled inside the fortifications. When the promoter may have sought other fields, some of the creditors of his schemes may round their solvent stockholders up, as they successfully did in the case we have been considering. If they sow the wind, in implied promise, they may reap a whirlwind in sorrow.

NOTES OF IMPORTANT DECISIONS

DIVORCE—FINAL DECREE ENTERED AFTER DEATH OF PARTY.—It appears from In re Seiler's Estate, 128 Pac. 334, decided by Supreme Court of California, that statute requires that first an interlocutory decree granting a divorce may be rendered and after a year has expired a final decree may be entered. It had been previously ruled that it is "the final judgment alone that grants the divorce, dissolves the marriage, restores the parties to the status of single persons and permits each to marry again." There is also provision that death of either party to a divorce action does not impair the power of the court to enter final judgment.

The above case shows that the wife sued, obtained an interlocutory decree in her favor and died within a year. The husband claimed his statutory right to administer upon her estate, which was denied by the Probate Court. Pending appeal the year elapsed and final decree was entered.

The court held that neither of these decrees impaired the husband's rights. As to provision for final decree notwithstanding death it was said: "The purpose of this provision is not entirely clear. Possibly it was designed to enable the court to establish by final decree rendered after the death of a party, property rights which had been passed upon provisionally or otherwise in the interlocutory decree. But certainly such final decree could not have been intended to effect the dissolution of the marriage. This result is already accomplished by the death of one of the parties. Nor can we believe that the Legislature intended to authorize the court, possibly of its own motion and against the will of the only remaining party in interest to enter a decree which should operate retroactively to take away rights of inheritance, which had, by the death, become vested in the surviving spouse."

This reasoning is not satisfactory. To us it seems clear that the purpose of the statute was but a method of enforcing restriction upon remarriage within a limited period, and not as prescribing a locus poenitentiae, and this is evident from the fact of proviso being made for final judgment after death of either party. The statute would have been better phrased had it provided that the interlocutory decree should become, or operate as, a final decree upon the death of either party within the year. This we believe, however, was what was meant, if the purpose was as we

above suppose. It seems that in this case the surviving husband was "the only remaining party in interest." This is not clear, for, even if the wife left no children or other relatives, the state could claim its escheat.

THE FALSE THEORY OF THE BINDING FORCE OF PRECEDENT.

The purpose of this article is not to review Mr. Black's recent work on Judicial Precedents. We have already done that. We wish merely to enumerate in detail the various phases and subjects of the book, in order to call attention, once more, to the falsity of the theory upon which the whole exposition is founded, viz: the binding force of judicial precedents.

Of course, it is not the intention to deny that the theory of judicial precedents as law in themselves, is at present ruling in America. The object is, to show that the theory is false, and to prove this, as near as possible, out of the book itself and the authorities there cited.

It may seem like fighting in the cause of a forlorn hope. And still the reading of this very book, where supposedly all essential arguments and authorities in support of its theory have been marshalled, cannot but inspire the rebel with hope when he sees, how they contradict and nullify each other: how the so-called theory, when fully exposed and elucidated, reveals itself as a dogma pure and simple; something you must take on faith, and no questions asked.

Now, legal dogmas are no different from Church dogmas. Those which refer to the exterior order and discipline are (or may be) proper and legitimate, while those referring to the conscience are tyrannical. The latter are all expressions of the tendency toward universalism which infects all persons in authority, especially those whose business it is to express opinions, to settle arguments.

There is no direct revelation from God to be interpreted, but there is the revelation of the law that is, whether direct statute law, or customary law called forth by the innumerable incidents of life.

One of these statutes or customs becomes the subject of a dispute between two parties; an accidental tribunal, personified in one or more accidental persons, is called upon to settle this dispute, which they do . . . and straight away this mere relative, accidental power proceeds to elevate its decision into the absolute: "We said so; therefore, it is right. Not only are you parties to the dispute bound thereby, but our decision must bind all future generations. Accept it, or be hanged."

Arrogance can hardly go any farther; not that we mean that this arrogance is conscious. Those who first arrogated to themselves this power, were doubtless conscious, to some degree at least, what it meant, and did it for a purpose. But nowadays, the great majority of judges simply take the doctrine on faith, and carry it out with a sweet feeling that they are defending liberty and property, and saving the state generally.

It is interesting, almost amusing to follow, how all such theories are justifying themselves.

First they state the theory, with the *a priori* addendum, that if this were not so, a number of horrible things would happen.

That really settles it, but of course, they wish to be fair, so the other side is introduced and supposedly allowed to bring forth what reasons it may have, why sentence should not be pronounced upon it. The propounders of the theory therefore proceed to bring forward a number of dummies and strawmen, which they label "defendant's brief and argument" and which it does not take them long to knock in the head and kill.

Now, if they would stop there, they might have a chance to convince that great, lazy majority which is always willing and anxious to take things on faith.

But, whomsoever the gods wish to destroy, they first make mad. So the pro-

pounders go on and say: We have now cleared the heretics from the field; but we know, that men's hearts are not satisfied with bare dogmas. We shall now show them that these dogmas are true, are right, are absolute.

And this they invariably do by reducing themselves *in absurdum*.

Let us now return to Mr. Black's book.

The theory is stated on page 3. A judicial precedent is one which "declares or enunciates the rule or principle of law which must (not may) be followed in the decision of similar causes in the future by the same court and by those courts which are under its revisionary jurisdiction;" and again "A judicial decision is a precedent (meaning a binding precedent) because it is an authoritative exposition of the law by a tribunal constituted for that purpose, and whose judgments are legally binding, not only on the parties immediately before it, but also upon other courts and upon the community generally."

Then comes the scare (mostly done by citations from other authors and courts), to-wit: If this was not so, every man appointed or elected to the bench would at once become an anarchist, and would not be governed by the law of the land, but by a "supposed higher law manufactured for each special occasion out of the private feelings or opinions of the judges" (McDowell vs. Oyer, 21 Pa. 417.)

The horrors of hell having in this way been dangled before the eyes of the timid, and having sufficiently intimated their minds, it is now the proper time to call out: Audiatur et altera pars—What is he then allowed to say? In substance it amounts to this, that in old Rome, the theory of judicial precedents did not prevail, and that Justinian forbade any binding force to be given to them. At the same time we are given to understand that the modern world, outside England and the United States, practice law under the rules of Justinian's code, and that the courts of Europe do not interpret the law but apply it only.

To these defenses the answer is given, that the Pretorian edicts (incidentally confusing the annual edicts prior to the time of Hadrian with the edictum perpetuum from his time on) really amounted to an acceptance of the theory of binding precedents, and that as the emperor was supreme legislator, executive and judge, all in one, as a matter of fact all of his decisions had the effect of binding precedents. Some of the European courts and codes are then passed in review. As to France, of course it would not do to go back to the law prior to Code Napoleon, but then it is pointed out that notwithstanding the fact that the code excludes judicial precedents as law, still the French courts, mirabile dictu, do not consider previous expressions upon the same subject, by authors and courts, as so much rubbish, but really pay attention to former expositions of the law upon matters in question. The impression is sought to be made, that the very necessity of the case will, in the long run, force the acceptance of the case law doctrine.

As to Germany and Austria, the task is comparatively easy. In this book published in the year of our Lord, 1912, German law is entirely disregarded, and the rules of a former Prussian code given out for German law, and as to Austria, a law not now in force is also trotted out as something now existing. Both of the laws referred to, date from times when the government of the two countries were wholly or practically autocratic, for which reason the supremacy of the King as supreme judge was, at least theoretically, adhered to. Great stress is also laid upon what used to be known as the "Kron-Juristen."

If the author and those, from whom he cites, had possessed any real information on these matters, they would have known that in both of said countries, the courts have, for the last 150 years, at least, been as free as in any other land to decide according to the law of the land, with the one exception, that in autocratic times political questions were actually settled ad-

ministratively, even if the forms of a judicial proceeding were used.

Now then, all the heretics and mischief makers together with their arguments having been shown to be anathema, it is time for Thomas Aquinas to appear and reduce the theory to a system. This is also done by citations, and consistently so, as the theory rests on authority, and on nothing else.

Let us remember the definition "A judicial decision is a precedent, because it is an authoritative exposition of the law, etc." In other words, every judicial decision is a precedent, is law.

Now let us hear the argument: "The court, almost always (sic!) in deciding any question, creates a *moral* power above itself; and when the decision construes a statute, it is *legally* bound, for certain purposes (sic!) to follow it as a decree emanating from a paramount authority." (Bates v. Relyea, 23 Wend. N. Y. 336, 340). This is really the argument put at the head of all others to uphold the doctrine! Honestly, is it anything but "Words, words, words?" or, as the Germans would say, "Viel Geschrei um wenig Wolle." But next Blackstone is brought forward: "because the law in that case being solemnly declared and determined, what before was uncertain and perhaps indifferent is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from . . . he being . . . not delegated to pronounce a new law, but to maintain and expound the old one." Not considering that this is the most beautiful example of petitio principii, which one may desire (the whole doctrine is nothing else) the question arises: Who delegated the judge making the precedent to declare new law?

Then Kent is cited: "If a decision has been made upon solemn argument and mature deliberation, the presumption is in favor of its correctness, and the community have a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it." At present, just this question: Who is to determine whether the argument was "solemn" and whether the deliberation was "mature"? Judge Cooley next: "All judgments are supposed to apply the existing law to the facts of the case, and the reasons which are sufficient to influence the court to a particular conclusion in one case ought to be sufficient to bring it or any other court to the same conclusion in all other like cases where no modification of the law has intervened." The duty of courts to apply the law is here translated into a supposition, i. e., an affirmation, that they always do so, because otherwise it could not be asserted that the same and all other courts ought to (i. e., must) reach the same result; *petitio principii* once more. Now comes Salmond and says: "The operation of precedents is based on the legal presumption of the correctness of judicial decisions. It is an application of the maxim *"res judicata pro veritate accipitur."* Without here bringing forth the fact that the doctrine of *res judicata* does not rest upon any presumption of correctness (veritas), for in such case proof of its incorrectness would upset it, but on the political maxim that there must be an end to law suits; if anything is sure, it is that the doctrine of *res judicata* applies only, where the same parties and the same rights (facts) are involved.

Just one more citation. In Bates v. Relyea, *supra*, the Supreme Court of New York declares: "The decisions of this court, while unreversed, always form the absolute law of the case, and enter with decisive effect into the body of precedents. They must, from the nature of our legal system, be the same to the science of law as a convincing series of experiments is to any other branch of inductive philosophy. They are, on being promulgated, immediately relied on according to their character, either as confirming an old or forming a new principle of action, which, perhaps, is at once applied to thousands of cases. These are continually multiplying throughout the whole extent of our

jurisdiction. Numerous and valuable rights, offensive and defensive, may be claimed under them." This is very solemn, so solemn that it becomes stilted and hazy. What is really meant? From the whole tone of the deliverance it is most natural to conclude that "the decisions" and "they" stand for "each decision," in other words, that the court upholds the doctrine in its purity. But then, the assertion is sought to be proved by a parallel drawn with a *convincing* "series" of experiments in any other branch of inductive philosophy. Does that mean, that a single isolated decision is not a precedent (in the so-called scientific sense, which, by the way, is as unscientific as anyone may desire), but that it takes a whole series of decisions (and convincing series at that) to establish the principle enunciated as law?

But enough of this. What has been said should be sufficient to show, that there is really no authority for the doctrine; nothing but dicta, and that dicta contradicting each other and in most cases contradicting themselves.

After 202 pages full of very good and instructive reading matter concerning the value of decisions, but almost all of which contradict the doctrine, the author, on pp. 203 and 204, reaches the salient point, namely, "Reasons for and against overruling former decisions." Seven reasons are stated as being "properly influential in inducing a court to overrule one of its former decisions." These reasons are: (a) That it was an isolated decision which has not been followed or acquiesced in, and is now deemed erroneous. (b) That the decision was rendered by a divided court, concerned a matter of great importance, and is now seriously doubted. (c) That it has been received with general dissatisfaction and submitted to under protest and severely criticised and that its authority is questionable. (d) That it is contrary to plain and obvious principles of law, provided it has not become a rule of property or been followed in numerous subsequent cases. (e) That it was an innovation and is contrary to the rule of law on the same subject which is of practically universal acceptance in all other jurisdictions. (f) That the right or interests of the state or its municipalities, or of the general public, are injuriously affected by the decision in question, but no private rights depend upon its maintenance, and it is erroneous. (g) That the decision was wrong and produces general inconvenience or injustice, and that, although some private rights may be injured by overruling it, yet less harm will result from that course than from allowing the decision to stand.

Then five reasons are given which should "influence a court against overruling a former decision, notwithstanding the fact that it is now deemed erroneous," namely: (a) That it stood unchallenged for a long period of years. (b) That is has been approved and followed in many subsequent decisions of the same or other courts. (c) That it has been universally accepted and acted upon and acquiesced in by courts, the legal profession, and the public generally. (d) That it has become a rule of property. (e) That contracts have been made, business transacted, and rights adjusted in reliance upon it, for such a length of time, or to such an extent, that more harm would result from overruling it than from allowing the original error to stand uncorrected.

Outside, perhaps, of the manner of statement in a few cases, we believe that every lawyer, on and off the bench, and everywhere, can agree to these twelve statements. But what becomes of the doctrine thereafter? Has it not vanished entirely into thin air? What is left of the opening statement that a judicial decision is a precedent and is legally binding? Now it must be restated to the effect, that a judicial decision is not binding when it ought not to be accepted as good law, but that it is binding in the opposite case and when special public considerations require it. But that again means that judicial decisions are not precedents per se; something else must happen to make them so.

Therefore, the doctrine as stated in the opening chapter of the book, and as held

up before every attorney by every court of the land, is really abandoned. This being the case, why not quit dogmatizing? Why not do away with the hypocrisy involved and come down to the actual facts and upon the foundation thereof try to find out and determine what is the real value of judicial decisions as one of the sources of law? We suppose that every lawyer trained in an American law school or law office has been inoculated with the theory that there is no middle way between the case-law doctrine and legal anarchy, and it may be difficult to get him to look at the question at a different angle, although if he really opened his eyes he could not help discovering, that such a middle way is actually being followed by the courts, even when, in the same breath, they emphasize the doctrine.

If the case-law theory were true, how is it that after centuries of reported cases, and decisions by the millions, every legal doctrine and question are still matters of dispute in all lands where the law is founded on the law of England, just as much, at least, as in continental Europe?

It is curious enough that this case-law aberration originated in a very sound view of the nature of law. Civil law, as handed down from the Roman imperators, and as practiced in Europe during the centuries of absolute governments, naturally had to look upon law as something absolute and fixed, resting in the bosom of the monarch, from whence it emanated all ready-made as occasions required. But the common law of England always recognized, at bottom at least, that law is a relative thing, a continuous growth, always in motion, in evolution, in the making, and the common law of England is the result of such a spontaneous growth.

This evolution, this growth, is nowhere evident as much and as often as in actual law cases. Each such case is like the pulsebeat of the arteries; they indicate the condition of the mind of society in relation to its position in matters of law. The facts are brought out, the different views of their legal effect are discussed, and the judge—a member of the same society—finally makes his decision; and the parties go away, one elated, the other cursing, or else both with the feeling that, after all, substantial justice has been done. Sometime later a very similar case arises between other parties, before the same or another judge. In the first case, the judge has renewed opportunity to ponder the question, but will *a priori* be inclined to consider his former decision sound. If he does, his theory of the question has been strengthened, because it has been reargued before him, and he has again thought it out to the best of his ability. In the latter case, the question is raised before a man not prejudiced by having previously decided it in certain manner; he naturally considers his colleague's opinion, but as it is but the opinion of another man, he cannot, and ought not, be bound by it. If, nevertheless, he reaches the same decision, the theory upon which it rests has been very much strengthened, and so on until an actual custom has been formed, i. e., until the law of the matter has been so fully and completely elucidated and defined, that for some time to come this particular question does not cause any doubt, and thus remains "settled" until some future day, when the conditions of society have so changed that the decision becomes at variance with the general conception of justice. Then the matter must be taken up again, and a new basis found.

Now, we must remember that at the time the case-law theory arose in England there were practically no other places where law was studied and discussed than in the courts. There was no legal literature in our sense of the word; a few collections of ancient laws and customs with explanations and some commentaries thereon. Cases were few compared with what they are today, and there was practically but one court before which the law was discussed. Naturally, under such circumstances, the deliverances by this court were looked up to with the greatest respect, and it was quite

natural that the court itself should take the position that their decrees were direct sources of law, that they were law. Another circumstance almost compelled them to take this view.

The old Germanic Assemblies possessed both the legislative and the judicial power. But all the manifestations of these powers appeared in the form of decrees. They cited their own former resolutions as the law, and if they wished to change the law, they did it instanter, *nunc pro tunc*, and applied the changed law to cases now before them which had arisen while the former law was in force. As the kings—by the aid of civil and canon law and lawyers—usurped the legislative and judicial powers of the assemblies, they reserved the first for themselves, but the latter they delegated to their judges. The judges felt that they were the successors of the assemblies, and for this reason their decrees must be law, and they also felt that they were the representatives of the king and spoke in his name; but under the new doctrine of kingly power, his will was law. So, in whatever way they looked at it, they were both judges and lawgivers.

Still, this whole doctrine of binding judicial precedents has never actually been much more than a creed. It has not worked in practice, and cannot so work; you cannot, in the long run, label some man's or men's opinion "law" and force it as such down the throats of the community; they will not believe it to be, or recognize it as law, unless it agrees with a reasonable view of the relations of life, and with a sensible interpretation and application of the law that is, and of the principles generally recognized. You may put all sorts of obstacles in the way of the natural development of the law proper, and thereby you may drive it away from its natural channel, but every strong current will force its way through, somehow. The obstacles put up may be so strong, the rigidity of the law may, through precedents, have become so great that it becomes necessary for the evolution to cut for itself an entirely new channel, as it happened in England when equity as such forced its recognition as a separate branch of the law. But under ordinary circumstances, the precedents standing in the way are very quietly, although continually bowled over, and the law, as it is practiced, manages, in the main, to follow pretty closely upon the heels of the procession, while, if the doctrine were true, we would still—statute law not considered—be living in caves and as cavemen.

When a man intends to "do" a country, he is sure to equip himself with a Baedecker, and to study it and refer to it constantly; but he is not bound to follow it explicitly, either as to the order in which to see things, or as to what things to see; neither is he bound to find beautiful or grand what Baedecker declares to be so. But the man who travels through, say, Northern Italy, and does not equip himself with and constantly refer to his Baedecker, is not only apt, but bound to become lost among the myriads of things to be seen, and is most likely to miss the things most worth seeing. Ordinarily, moreover, he will find that the people who planned the guide-book knew their business and that, by following the book, he will obtain the best results.

When the question is, how to decide a point of law, it is not only desirable, but necessary, first to examine, whether such point was ever discussed and decided before; not because such former decision is necessarily binding, but because it is one of the best guides that can be had. Very nearly the same facts have been gone over; what was said on both sides is set forth, the decision by the court and the reasons for it are declared. If it should be found that a number of such decisions have been rendered by different courts and during a considerable space of time, the value of such a guide increases in a geometrical proportion; yes, it may in such case be concluded that a custom has been formed and that, *for this reason*, law has been formed. But in themselves decisions do not differ from other discussions of law, juridic literature, namely. The very identical question of law

may have been discussed by any number of authors, and may by them have been solved in the same way as by the courts, or in a different way. As authoritative statements of what the law is, such discussions are worth as much as similar discussions by the courts, and are often worth more, because they generally rest upon more minute examinations, analyses and syntheses. They are better instructors, but in practice they are not as valuable guides, just because they are nothing else than discussions, while decisions are discussions followed by applications. The possibility of building steam engines, was the result of the development of the science of physics; but this science having been once applied, this one actual application is worth more to the next builder than the whole of science, because it is and remains, not a mere teacher, but a guide, an example.

Do we mean to say, then, that the whole controversy is one about words and phrases only? Yes and no. Yes, in so far as no court in any land, whatever it may say *ex cathedra*, in practice lives up to the doctrine, but considers itself at liberty to cut through the wall of precedents when it finds it necessary to do so. No, because the constant public reiteration of the doctrine is bound to have practical effects. It is the greatest scheme ever devised to help a court, so disposed, or timid, to refuse to do social justice: "We see the injustice of the thing; we would love nothing better than to be able to declare the law to be so; we believe that if this question were now to be decided for the first time, we would so declare. But, unfortunately, we are powerless; our hands have been tied by our forefathers, and it was for them to say, what law their great-grandsons should enjoy."

There is no doubt, that the greatest part of the common law, and that in all countries, has been developed through its applications. The best of our present culture and civilization, on its legal side, we owe, not to the legislatures, but to jurisprudence and to the courts.

But in our English-American law we meet a phenomenon, unknown elsewhere, this namely: that from time to time it becomes necessary for the legislative power to step in and correct the courts, because they have shown, and do show themselves to have a tendency to develop and stick to unsocial, and therefore unjust, theories and doctrines. The case-law doctrine prevents them, unlike other sound bodies, from throwing off such disease germs as may enter their organisms; in other words, this doctrine is like a special field inside the body, eminently suited to absorb such bacilli, and where they find the most favorable conditions for a healthy growth.

All of those remarkable unsocial legal doctrines with which we are now, at last, battling all over the states, and which we find it very hard to overcome, and many of which England has had to uproot during the last generation or two, had their births in, and would never have grown to manhood but for the case law doctrine.

The difference in the two doctrines may be briefly stated thus: Under the case-law doctrine, the precedents show what the law is; under the other view, they show how the law that is, at any given time was or is understood and applied. At the point nearest contact, the divergence is very small, but there is a distinct divergence, and in their ultimate consequences the divergence is very appreciable. We believe that the case law doctrine leads into the untenable and, what is worse, it works mischief. The other theory remains sane, safe, sound and sober, however far we proceed from the starting-point.

AXEL TEISEN.

Philadelphia, Pa.

HUSBAND AND WIFE—INTERFERENCE WITH RELATION.

WORK v. CAMPBELL.

Supreme Court of California, Dec. 13, 1912. Rehearing Denied Jan. 10, 1913.

128 Pac. 943.

A wife induced by the false representations of a third person in whom she has confidence to treat her husband harshly and cruelly, so as to cause him to leave her, may recover from the third person the damages caused thereby, where her conduct would have been justified if the representations had been true.

ANGELLOTTI, J.: Defendant's demurrer to plaintiff's amended complaint having been sustained, and plaintiff having declined to amend, a judgment of dismissal was given. This is an appeal by plaintiff from such judgment.

The action is one to recover of defendant $15,000 damages alleged to have been caused plaintiff by reason of the fact that she has

become finally separated from her husband, L. B. Work, and has thereby suffered and will continue to suffer great distress of mind and mental anguish, and has lost and will continue to lose forever his society, comfort, love, and affection, as well as the support and maintenance which he would give her. On or about February 15, 1910, the husband "separated from plaintiff, and from their said children, and departed from the said county of Kings, and has gone to parts unknown to plaintiff with intent to desert and abandon plaintiff." It is not alleged that defendant, who is the husband of an aunt of plaintiff, ever said or did anything to influence the husband to leave plaintiff, or to cause any change of feeling on his part toward her. It is frankly alleged that his departure was caused solely by the fact that she became very angry with him, refused to see him, refused to speak or talk with him, sent him a letter in which she told him that she would hold no further communication with him, but would sue him for a divorce, and that she hoped she might never see or speak to him again. Her complaint characterizes her conduct toward her husband, alleged to be the sole inducement for his departure, as "harsh and cruel treatment" of him. The claim of any liability on the part of defendant to her on account of the separation is based on allegations to the effect that her attitude and conduct toward her husband, which caused the separation, were wholly induced by certain false statements knowingly made to her by defendant concerning her husband, which, owing to her confidence and trust in defendant, she fully believed and relied upon, and certain advice and counsel given to her by defendant in the matter, all of which statements and advice were willfully made and given by defendant with the intent and design on his part to cause a separation between plaintiff and her husband. The complaint alleges in detail the alleged statements and advice of defendant in this behalf, and also the object sought to be obtained by him in causing a separation of the husband and wife, but no useful purpose can be subserved by stating these things here. It further alleges that, when she discovered the falsity of the representations and the intent and purpose of defendant in making them, she at once instituted diligent search for her husband, but has been unable to ascertain his whereabouts. It is further alleged "that, by reason of the premises hereinabove stated, defendant has unlawfully, fraudulently and wrongfully abducted and enticed from the plaintiff her said husband, and that, by reason of the said abduction, this plaintiff has suffered," etc., to her great damage in the sum of $15,000.

(1, 2) Under our statutes, a wife may maintain an action for damages suffered by her by reason of the abduction or enticement from her of her husband, as may a husband for the damages suffered by him for the abduction or enticement from him of his wife, and in such an action by the wife her husband is not a necessary party plaintiff. See Civ. Code, § 49, subds. 1, 2; Humphrey v. Pope, 122 Cal. 253, 54 Pac. 847.

(3) It may be assumed, purely for the purposes of this decision, that no cause of action for the abduction or enticement of her husband from her is stated by the wife in her complaint. The direct cause of her husband's departure was, of course, her own conduct toward him, and such departure was in no degree brought about by any statement or act of the defendant, except in so far as his statements and advice to the plaintiff influenced her conduct toward her husband, which was the sole direct cause of his leaving, and of any change in his feelings toward her. It may well be argued that the facts alleged indicate rather an abduction or enticement of the wife from her husband by defendant, for which the husband would have the right to maintain an action for damages against him, than an abduction or enticement from the wife of her husband by defendant. Of course, it may be claimed, with some show of reason, that by means of the fraud practiced upon her the wife was a mere instrument in the hands of defendant by means of which he willfully accomplished the taking away or enticement of her husband from her, and that he is therefore responsible to her in damages as for an abduction or enticement of the husband. But it is uncertain whether in any such case where the plaintiff's own conduct in the matter, however produced, is the sole operative cause of the separation, it can fairly be held that he or she may maintain an action based on the theory that another has accomplished the abduction or enticement away of the other spouse, and we prefer to leave the question undecided here, as its determination is not, as we view the case, essential.

We can see no reason why, regardless of the question we have just referred to, the matters alleged in the complaint do not show a cause of action in behalf of plaintiff against defendant. According to the complaint, the sole cause of the conduct of plaintiff causing the separation of the husband and wife, with the same injurious consequences to her that would have followed the abduction or entice-

ment of her husband from her, was the action of defendant in making to her the willfully false representations concerning her husband, for the very purpose and with the design on his part to so influence her as to bring about such a separation. His deception in the matter was the sole cause of such conduct on her part, and such conduct on her part was tantamount to a refusal by her to continue the relation between her husband and herself of husband and wife. It is declared in section 1708 of the Civil Code that "every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights," and in section 1709 "one who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers." These are but statements of the well-settled law independent of statute. It is substantially said in 20 Cyc. at page 10, and the statement is well supported by the authorities, that as a general rule, an action for damages for deceit will lie wherever a party has made a false representation of a material fact susceptible of knowledge, knowing it to be false or not having sufficient knowledge on the subject to warrant the representation, with the intent to induce the person to whom it is made, in reliance upon it, to do or refrain from doing something to his pecuniary hurt, when such person, acting with reasonable prudence, is thereby deceived and induced to so do or refrain, to his damage. No reason is apparent to us why the alleged facts set forth in the complaint should not be held to bring the case within the operation of this rule. It is no answer to such an action that the action or conduct of the plaintiff is the direct cause of the result occasioning damages. Such is the situation wherever such an action is allowed. The whole basis of the action is that such act or conduct is fraudulently induced by the defendant. A. is willfully deceived by B. into selling goods to C. upon credit, by false representations as to C.'s solvency willfully and knowingly made by B. to A. for the very purpose of inducing him to so do, and thereby suffers pecuniary injury. The direct and immediate cause of the injury is, of course, the sale by A. to C. on credit. But B. is held liable to A. for the damage thereby suffered because by fraud he induced A. to make such sale on credit.

(4) It may be urged that a person fraudulently misled cannot found his claim on conduct violative of sound morals or public policy, or of a criminal statute. Here the conduct and attitude of the wife causing the separation was her harsh and cruel conduct toward her husband, her refusal to live with him or to see him, her refusal to further continue the relationship of husband and wife, etc. Of course, all her conduct would have been fully justified if the representations made to her by defendant had been true in point of fact, as the complaint sufficiently alleges that plaintiff believed to be the situation. It has been held that, where the fraudulent representation is intended to create and actually does create in the mind of the party a belief that under the circumstances represented the act which he is induced to do is neither illegal nor immoral, he may recover the damages he has sustained, even though a statute makes the act a criminal offense. See 20 Cyc. 80; Burrows v. Rhodes, 1 Q. B. 816 (1899); Prescott v. Norris, 32 N. H. 101; Morrill v. Palmer, 68 Vt. 1, 33 Atl. 829, 33 L. R. A. 411. We are not called upon to go as far as this in this case. The complaint indicates no criminal offense on plaintiff's part. Certainly, however, under the circumstances stated, it cannot fairly be said that plaintiff did not believe her conduct toward her husband to be in full accord with good morals and public policy, or was not justified in so believing. It is not claimed that the complaint does not sufficiently show that plaintiff acted with reasonable prudence in accepting as true and relying on defendant's statements. In view of the circumstances alleged as to her relationship to defendant, and her confidence and trust in him, we think the complaint is not fatally defective in this regard, although it must be conceded to be somewhat remarkable that a wife having any affection for or confidence in her husband should be willing to accept as true such statements as are here alleged to have been made to her, without making some further inquiry.

We have not found any case in which the remedy of action for damages for deceit has been invoked under such circumstances as appear here. The fact that the case presented is unique in its circumstances is not, however, any warrant for a refusal to apply a rule that appears on principle to be applicable. We think the facts confessed by the demurrer show a liability on the part of defendant to plaintiff for any damage caused her by the loss of her husband. We are unable to see any force in any other objection made by the demurrer.

The judgment is reversed and the cause remanded, with directions to the lower court to overrule the demurrer to plaintiff's amended

complaint, with leave to defendant to answer.

We concur: SHAW, J.; SLOSS, J.

NOTE.—*Proximate Cause in Alienating Affection Between Husband and Wife.*—The instant case is unique, but we think in reason it is within the principle that a voluntary act by a consort may not necessarily break the chain of causation in bringing about an interference with the marriage relation.

That intereference with the marriage relation by way of alienation of affections is actionable needs no discussion. That is the ground of all suits of this character. The instant case is singular, because of the question of proximate cause being or not in the intervening free act of the spouse causing a separation. We, like the author of the opinion, find no other case, where the complaining spouse sets up his or her intervening act as being a mere link in the chain of causation bringing some precedent act into play as the proximate cause.

But we do find some interesting cases where the free intervening act of the spouse not complaining was deemed merely an act in natural sequence and not effective as displacing what otherwise would be deemed the proximate cause

Thus the principle has been laid down that: "Where damages are asked for the alienation of affection each case must stand on its own facts." Holtz v. Dick, 42 Oh. St. 23. Later it was observed by the same court that: "If the proposition that the act of the consort responding to external influence must not be voluntary were to be adopted as an arbitrary rule of law controlling each and every case, then few or no actions for alienation of affections could be maintained." Flandermeyer v. Cooper, 85 Oh. St. 327, 98 N. E. 102.

In this case the suit was brought by the wife. Her husband had been a victim of the morphine habit, but had been cured. The wife, believing, however, that he would be weaker than if he had never been enslaved by its use, went to defendant's drug store and requested him not to sell any morphine to her husband. He told her that she could not prevent him making such sales if her husband desired to buy, and defendant continued to sell him. As, however, there was evidence that the husband had ceased to be a free agent, his independent act in purchasing the drug could not be considered the proximate cause of the injury to the wife. Therefore it may be said the analogy is not close between the Ohio case and the instant case.

The case of Hart v. Knapp, 76 Conn. 135, 55 Atl. 1021, comes somewhat closer to the instant case. There a woman having illicit intercourse with the husband was defendant in an alienation suit, and the claim was that the wrong was that of the husband, and her misconduct was induced by persuasion of the husband. The court speaks of the contention as follows: "In what she did with the husband, she did with full knowledge that it was wrongful and that it would, as the plaintiff claims it did, result in harm to the plaintiff. The gist of the advice (instruction) set up in the requests is that the defendant did a great wrong by the persuasion of the husband. We know of no rule of law, civil or criminal, that absolves her from liability for such wrong because of such persuasion." Of course, this does not mean that the husband could have maintained an action against his paramour because her consent had alienated the affections of his wife, but the case does show that the free act of one consort in participation in a wrong that interferes with the marriage relation does not estop the other consort in an action against the other wrongdoer. This case, therefore, does not support the instant case any further than to determine that the free act of a consort, though necessary for there to be an interference with the marriage relation, does not necessarily become the proximate cause of interference.

The Connecticut court further shows it accepts fully the logic of the principle it announces by declaring that: "She (defendant) is responsible to the wife for the results of her conduct with the husband, even if it be true that he persuaded her to do what she did, and 'was the active or aggressive party' in procuring her to do so."

The right of the wife to sue is said to be for loss of *consortium*, which belongs to her in the same way that it belongs to the husband. She could not sue at common law because she could not sue in her own name for a personal injury. Since she has no disability to sue this is different. Nolin v. Pearson, 191 Mass. 283. This court, however, held that this applied to cases where there was a direct and intentional invasion of a wife's consortium by another woman through the alienation of the husband's affections and criminal conversation with him. Feneff v. N. Y. C. & H. R. R. Co., 203 Mass. 278, 89 N. E. 436. The court must be considered as speaking illustratively and not exclusively. The point is that the loss of consortium caused by the act of another gives the right of action.

In the instant case it is apparent, that, if the wife were misled into acting as she did, her innocent act ought not to bar her suit against one who caused her to drive her husband from her. It was merely an act in natural sequence from the primary cause, and was not, in essence, a free act in the sense of its being voluntary, because there was deception. It was the bringing about of a distorted view that was the proximate cause—the interposing, not of volition by the wife, but a false appearance on things that was the proximate cause. The wife's will in the instant case was merely an instrument in the wrongdoer's hands to the end presumed to be contemplated. C.

ITEMS OF PROFESSIONAL INTEREST

BAR ASSOCIATION MEETINGS — WHEN AND WHERE TO BE HELD.

AMERICAN BAR ASSOCIATION—Montreal, Canada, September 2, 3, and 4, 1913.

ARKANSAS—Some time in May or June.

ARIZONA—Phoenix, some time in November.

CALIFORNIA—San Diego, November, 1913.

COLORADO—Colorado Springs—probably in July, 1913.

GEORGIA—Atlantic Beach, Fla., May 30 and 31, 1913.

INDIANA—Indianapolis, second week in July.

IOWA—Sioux City, June 26 and 27, 1913.

KENTUCKY—Olympian Springs, July 9 and 10, 1913.

LOUISIANA—New Orleans, April 11 and 12, 1913.

MINNESOTA—St. Paul, some time during August, 1913.

MISSOURI—Kansas City, 3d and 4th week in September, 1913.

MISSISSIPPI—Greenwood, first Monday in May, 1913.

MICHIGAN—Lansing; date not fixed.

MONTANA—Eastern Bar Association, Hunter's Hot Springs, early part of August.

NEW YORK—Utica, third week in January, 1913.

NEW JERSEY—Atlantic City, some time during June, 1913.

OHIO—Probably at Cedar Point, during July, 1913.

OREGON—Portland, November, 1913.

PENNSYLVANIA—Cape May, N. J., June 24, 25 and 26, 1913.

SOUTH CAROLINA—Columbia, January 23, 1913.

TENNESSEE—Probably in Memphis, during May, 1913.

VERMONT—Montpelier, first Tuesday in October, 1913.

VIRGINIA—Hot Springs, July 29, 30 and 31 1913.

WEST VIRGINIA—Wheeling; date not fixed.

WISCONSIN—Milwaukee, some time during June, 1913.

PROGRAM OF THE MEETING OF THE LOUISIANA BAR ASSOCIATION.

The annual meeting of the Louisiana Bar Association will be held in New Orleans, April 11th and 12th, 1913.

"The Law of Corporations in Louisiana," will be the subject for general debate; it will be divided into five heads, as follows:

1st—Corporation and Citizenship. Domestic and Foreign; Jurisdiction over Foreign.

2nd—Powers and Rights of Corporations and of Officers Thereof; and Herein of Ultra Vires Acts.

3rd—Insolvent Corporations, Their Administration and Liquidation.

4th—State Legislation and Control, Including Taxation, Forfeiture, and Public Service Commission.

5th—Codification, Is It Desirable?

The committee reports the matters of detail will take up the rest of the session.

BOOK REVIEWS.

SNELL'S PRINCIPLES OF EQUITY, 16TH EDITION.

This work was intended for the use of students and of practitioners and that the double purpose has found success is attested by the popularity of its recurring editions, the latest edition being the thirteenth since 1875, when in England, "law and equity were for the first time fused effectively under one and the same judicial administration."

The text of this work is annotated wholly upon English decision, but the principles, which are traced through such decision down to date are those upon which our equity jurisdiction is founded, and their study is necessarily useful to both student and practitioner in this country.

The author observes that, "Equity was in old times comparatively free from the control of precedents, 'the measure of the chancellor's foot' having been (and necessarily) the measures of the equity jurisdiction. But a Court of Equity is now bound by precedents and by settled rules as completely as a court of common law is bound." How true this is in this country may be disputed, at least in degree, but it is a consummation devoutly to be wished for, and the further that goal may seem to be receding the more may it be thought our jurisprudence is retrograding—the interval being increased by retreat and not because principle is changing its base.

This edition is by Mr. Archibald Brown of Lincoln's Inn ,is bound in cloth and published by Stevens & Haynes, Law Publishers, London, 1912.

HUMOR OF THE LAW.

A colored man wanted a divorce on the ground of "exertion."

"You mean desertion," corrected the lawyer.

"No, sah; she haint left me," answered his client. "I said 'exertion' an' dat's de ground perzackly. She done exert herself to make me mizzable, sah. Put it on de ground ob exertion."—Boston Transcript.

A New York visitor from the far interior who was a stranger to law courts was taken one morning to witness the opening of court. When he heard the judge, whose ancestors were evidently of the Emerald Isle, address a Hebrew attorney as "brother," he expressed his surprise.

"Brothers!" he exclaimed. "That's a joke. Look at 'em ag'in."

"Well," replied his companion soberly, "they are brothers, all right."

"An Israelite and an Irishman! How do you make that out?" he wanted to know.

"Why, they're brothers-in-law," was the response, "the kind that sticketh closer—and also deeper—than the ordinary kind."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Adverse Possession**—Tacking.—One who does not claim under or through another cannot tack the latter's adverse possession to his own to establish title by adverse possession.—Kelly v. Kremm, 138 N. Y. Supp. 626.

2. **Alteration of Instruments**—Accommodation Indorser.—An accommodation indorser on a note, was bound, notwithstanding the alteration.—Handsaker v. Pederson, Wash., 128 Pac. 230.

3. **Attorney and Client**—Authority of Attorney.—An attorney has power to represent his client in court in all matters of practice, and he has implied authority to discontinue the action.—Furman v. The Bon Marche, Wash., 128 Pac. 210.

4.——Ethics.—It is improper for an attorney to accept a retainer from a party who expects to call him as a witness.—Flood v. Bollmeier, Iowa, 138 N. W. 1102.

5. **Bankruptcy**—Burden of Proof.—Where, on the morning of seizure of bankrupts' assets by a United States marshal, there were, according to the bankrupts' statement, $2,000 worth of goods in the store, but when the seizure was made there were goods of the value of $115 only, the burden was on the bankrunts to surrender the balance or explain the loss.—In re Rosenthal, U. S. D. C., 200 Fed. 190.

6.——Discharge.—A bankrupt held not entitled to a discharge for failure to keep books of account or records from which his condition might be ascertained.—Baylor v. Rawlings, C. C. A., 200 Fed. 131.

7.——Local Law.—A chattel mortgage given by bankrupt on a stock of goods held valid under the law of New Mexico, except as to creditors whose debts were contracted while the mortgage was withheld from record.—In re Harnden, U. S. D. C., 200 Fed. 175.

8.——Practice.—Where an insurance policy on the life of the bankrupt was in the possession of his wife, who claimed she had paid premiums out of her own funds, it was error to require the bankrupt to do more than assign all his rights in the policy to the trustee.—In re Loveland, C. C. A., 200 Fed. 136.

9.——Practice.—Where the referee in bankruptcy, after due notice to creditors, approved a settlement of a litigation entered into by the trustee in bankruptcy, the settlement was binding.—Lake v. Dredge, Iowa, 138 N. W. 869.

10.——Preference.—Where a firm, in contemplation of bankruptcy, paid to a nartner $200 in return for her investment in the business, she was liable for the return of such payment to the firm's trustee in bankruptcy.—In re Rosenthal, U. S. D. C., 200 Fed. 190.

11.——Schedule.—Property belonging to a bankrupt's estate, but not scheduled, passes nevertheless to the trustee, and, if no trustee is elected, the equitable title is in the creditors, and not in the bankrupt.—Juden v. Nebham, Miss., 60 So. 45.

12. **Banks and Banking**—Insolvency.—"Insolvency," in its legal sense, as applied to banks and trust companies, exists whenever such an institution, from any cause, is unable to pay its debts in the ordinary course of business.—Commonwealth v. Tradesmen's Trust Co. of Philadelphia, Pa., 85 Atl. 363.

13. **Bills and Notes**—Nonnegotiability.—Equities against nonnegotiable promissory notes in the hands of an assignee, acquired by the promisor against him, while he had them, are available as against a subsequent assignee.—Marshall v. Porter, W. Va., 76 S. E. 653.

14. **Boundaries**—Estoppel.—Where the owner of land points out a certain line as a boundary, he may be estopped from thereafter denying such boundary.—Proctor v. Libby, Me., 85 Atl. 298.

15. **Brokers**—Compensation.—A broker undertaking to sell real estate on specified terms and effect a completed sale is not entitled to his commission though the purchaser proposed by him enters into a contract with the owner which he is subsequently unable to perform.—Nagl v. Small, Iowa, 138 N. W. 849.

16.——Exchange.—A contract to pay a commission for a broker's effecting a contract was based on sufficient consideration, where the broker agreed to act as agent in "negotiating an exchange" of property, and secured a binding agreement of a third person to make the exchange.—Lundeen v. Ottis, Cal., 128 Pac. 335.

17.——Notice.—Where a broker acted for both parties in an exchange of property, his knowledge of the true amount of special taxes on defendant's lots, the amount of which defendant had misrepresented to plaintiff, was not notice of the true amount to plaintiff.—Woteshek v. Neumann, Wis., 138 N. W. 1000.

18. **Carriers of Goods**—Waiver.—A stipulation limiting the liability of the carrier or fixing the time and manner of giving notice or presenting claims may be waived by the carrier impliedly, by conduct, as well as expressly.

—St. Louis & S. F. R. Co. v. James, Okla., 128 Pac. 279.

19. **Carriers of Passengers**—Insults.—Language which, by common consent among civilized people, is vulgar, and offensive to ordinary female sensibilities, or disrespectful to the female presence, if indulged in by a carrier's servants or others in the presence or hearing of a female passenger, is actionable.—Birmingham Ry., Light & Power Co. v. Glenn, Ala., 60 So. 111.

20.——Regulations.—Adequate local passenger traffic having been provided for by a carrier between two points, a regulation that another train should not engage therein was reasonable.—Ohage v. Northern Pac. Ry. Co., C. C. A., 200 Fed. 128.

21. **Compromise and Settlement**—Fraud.—A settlement of a pending litigation, induced by the fraud of one of the parties thereto, is voidable only at the election of the other party on returning or offering to return the consideration received thereunder.—Lake v. Dredge, Iowa, 138 N. W. 869.

22. **Contracts**—Confidential Relation.—A contract between one occupying a fiduciary or confidential relation to another is presumptively fraudulent on the part of the former.—Curtis v. Armagast, Iowa, 138 N. W. 873.

23.——Consideration.—Where notes are given for a debt then incurred, an agreement that they shall also cover a prior indebtedness is invalid because without consideration.—Cuthbertson v. First Nat. Bank, Iowa, 138 N. W. 1090.

24.——Fraud.—The concealment or suppression by a party to a contract, with intent to deceive, of a material fact which he is in good faith bound to disclose, amounts to a false representation.—Barrett v. Lewiston, B. & B. St. Ry. Co., Me., 85 Atl. 306.

25.——Mutuality.—A promise, not under seal, made by one party, with none by the other, is void for want of mutuality.—Grossman v. Schenker, N. Y., 100 N. E. 39.

26. **Corporations**—Coupons.—Each coupon on a bond protected by a mortgage is a part of the bond, and on severance the holder thereof is equitably the owner of a proportion of the bond.—Hall v. Passaic Water Co., N. J., 85 Atl. 349.

27.——False Representations.—Equity has jurisdiction to set aside a contract to purchase corporate stock, which complainant was induced to execute by material false representations.—Southern States Fire & Casualty Ins. Co. v. Tanner, Ala., 60 So. 81.

28.——Foreign Corporations.—The Legislature may limit and restrict the operation in this state of foreign corporations, but cannot confer upon them powers not conferred by the state of their domicile.—Riddell v. Rochester German Ins. Co. of New York, R. I., 85 Atl. 273.

29.——Notice.—One dealing with a corporation through its officer is presumed to know that the officer may not bind the corporation in a matter in which he is adversely interested.—Mooney v. O. P. Mooney Co., Wash., 128 Pac. 225.

30.——Officer.—Corporation held not bound by agreement of its vice-president that a debt owed by him individually should be credited on an account for building material sold by the corporation.—Clow-Schaaf Lumber Co. v. Kass, S. D., 138 N. W. 1120.

31.——Officer.—A contract by a superintendent of a water company to furnish water to a private consumer for fire purposes at the regular rate charged for water for other purposes was not binding, in the absence of his authority to make the contract, or proof of other similar contracts made by him and ratified by the company.—Hall v. Passaic Water Co., N. J., 85 Atl. 349.

32.——Situs of Stock.—Corporate stock may be regarded as having its situs either at the domicile of the holder or at the domicile of the corporation; hence, though the corporation maintain an office in a foreign state, which is not the domicile of the holder, the stock has no situs in that state.—Lockwood v. United States Steel Corporation, 138 N. Y. Supp. 725.

33.——Unpaid Subscription.—An incorporator cannot defeat the collection of his unpaid subscription for stock by showing that another incorporator agreed to pay for the stock subscribed by him.—Robson v. C. E. Fenniman Co., N. J., 85 Atl. 356.

34. **Covenants**—Measure of Damages.—The amount paid by a warrantee to protect his title against an incumbrance is presumptively the measure of damages for breach of a covenant against incumbrances.—Boice v. Coffeen, Iowa, 138 N. W. 857.

35. **Criminal Law**—Former Connection.—Where accused obtained a reversal of a conviction of voluntary manslaughter for error in refusing to receive a verdict of involuntary manslaughter, he was estopped to thereafter assert that the conviction of involuntary manslaughter was invalid, because not received, and for a failure to poll the jury.—Register v. State, Ga., 76 S. E. 649.

36.——Instructions.—Where accused produced no evidence, it was not error to charge that he might rely on the state's evidence to make out his defense.—State v. Johnson, N. C., 76 S. E. 679.

37.——Rape.—In a prosecution for statutory rape, evidence of acts of intercourse immediately prior to the time relied on for conviction, other than the act so relied on, is competent in corroboration.—State v. Schueller, Minn., 138 N. W. 937.

38.——Venue.—The common-law rule was that concurrent jurisdiction exists in the places of the starting and consummation of an offense, provided the offense was indictable in the place of consummation.—People v. Arnstein, 138 N. Y. Supp. 806.

39. **Damages**—Special Findings.—As a rule it is improper to require the jury to answer interrogatories itemizing damages in a tort action, where it is unnecessary to plead such elements of damage.—Cleveland, C., C. & St. L. Ry. Co. v. True, Ind., 100 N. E. 22.

40. **Death**—Contributory Negligence.—Less evidence of freedom from contributory negligence of the intestate is sufficient than where one sues for a personal injury and can testify.—Brudie v. Renault Freres Selling Branch, 138 N. Y. Supp. 657.

41. **Deeds**—Delivery.—Where a grantor, executing a deed, delivered it to the grantee, who

immediately delivered it to a third person to deliver it to the grantee on the death of the grantor, there was a valid delivery sufficient to pass a present estate to the grantee.—Luscombe v. Peterson, Mich., 138 N. W. 1057.

42. **Descent and Distribution**—Advancement.—Where a husband was a party with his wife in a mortgage of her property, and covenanted to pay interest and taxes, the mere fact that his mother paid the charges, in the absence of any request on his part, did not show an advancement for his account.—Zerega v. Zerega, 138 N. Y. Supp. 580.

43.——Divorce.—A husband's right to inherit from his wife and to administer her estate is not affected by an interlocutory decree of divorce, where she dies before the final judgment has been or can be entered.—In re Seiler's Estate, Cal., 128 Pac. 334.

44. **Divorce**—Alimony.—Where the income of a trust estate belonging to a husband was subjected to the payment of alimony, the decree may be enforced against the trustees, the husband having left the jurisdiction; the order requiring them to pay the income to the wife being an absolute protection.—Hoagland v. Leask, 138 N. Y. Supp. 791.

45.——Estoppel.—Where a wife procured a decree of divorce, and the husband acted upon the same by remarrying, she was estopped to subsequently attack the validity of such decree.—Simmonds v. Simmonds, 138 N. Y. Supp. 639.

46.——Publication Service.—A decree of divorce obtained by a wife, who separates from her husband for good cause and removes to another state, becoming a bona fide resident, is valid against the husband, served only by publication, without any appearance in the suit.—Taylor v. Taylor, Fla., 60 So. 116.

47. **Druggists**—Negligence.—A party who negligently fills a prescription is liable for resulting injuries, though he is not a registered druggist.—Coughlin v. Bradbury, Me., 85 Atl. 294.

48. **Easements**—Distinguished.—An "easement" is a servitude upon, and differs from an interest in, or lien upon, the land.—Jackson v. Smith, 138 N. Y. Supp. 654.

49.——Implied.—Easements by implication are such as must be presumed to have been in the minds of the parties concerned, and the necessity of the use is a material consideration in determining whether an easement is implied.—Kane v. Templin, Iowa, 138 N. W. 901.

50. **Electricity**—Lure to Children.—An electric light company held bound to anticipate injury from its wires strung less than two feet above a lumber pile and to use due care to prevent injury to children and others who might be there.—Meyer v. Menominee & Marinette Light & Traction Co., Wis., 138 N. W. 1008.

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